



Appeal Decision

Site Visit made on 14 April 2021

by H Miles BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 APRIL 2021

Appeal Ref: APP/X2220/D/20/3261676

26 Balmoral Road, Kingsdown CT14 8DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by S Winkler against the decision of Dover District Council.
- The application Ref 20/00699, dated 1 July 2020, was refused by notice dated 7 September 2020.
- The application sought planning permission for erection of single storey rear extension, front and rear dormers, and raised side terrace without complying with a condition attached to planning permission Ref 20/00197, dated 18 June 2020.
- The condition in dispute is No 3 which states that: Following the occupation of the development hereby permitted a continuous hedge at a height of no less than 3.25 metres shall at all times be retained along the rear south east boundary of number 26 Balmoral Road, Kingsdown.
- The reason given for the condition is: In the interest amenity to prevent unacceptable overlooking and loss of privacy.

Decision

1. The appeal is allowed and planning permission is granted for erection of single storey rear extension, front and rear dormers, and raised side terrace at 26 Balmoral Road, Kingsdown CT14 8DB in accordance with the application Ref 20/00699, dated 1 July 2020, without compliance with condition number 3 previously imposed on planning permission Ref 20/00197 dated 18 June 2020 and subject to the following conditions:
 - 1) The development hereby permitted shall be begun before 18 June 2023.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: BR01B, 07, 05F, 08D and 09 received 24th February 2020 and Drawings BR04D, 06B, 09A and 10H received 9th March 2020

Main Issue

2. The main issue is the effect that removing the condition would have on the living conditions of neighbouring occupiers, with particular reference to the rear dormer window.

Reasons

3. The proposed rear dormer window would create new windows at first floor level which would face towards the rear of properties along Carlton Road, the closest property being Hilmor. Balmoral Road is at a higher level than Carlton Road, so the proposed dormer window would be in an elevated position.

4. The evidence submitted states that the distance between the dormer window and the windows at Hilmor would be at least 23m. Therefore, even without any boundary treatment and taking into account the level change between the properties, the distance and angle of view between these windows means that direct views into habitable rooms in close proximity are unlikely. The distance from other neighbours would be even further and angle of view would be even more indirect.
5. Furthermore, there are existing dormer windows at other nearby properties on Balmoral Road. Therefore, any perception of overlooking that may arise would be similar to existing relationships in the surrounding area. As such, the proposed arrangement would not be unduly harmful over and above the current situation.
6. Consequently, the provision and retention of a 3.25m hedge along the rear south east boundary would not be necessary or reasonable for the reasons above.
7. The condition would be enforceable as the maintenance and pruning of a hedge within the boundary of the appeal site would be within the appellant's control, as would the ability to replace any parts of the hedge which may die. Nevertheless, as the condition would fail the tests set out above, this does not mean that the condition should be imposed.
8. Consequently, removing the condition would not result in harm to the living conditions of neighbouring occupiers, with particular reference to the rear dormer window. Therefore, in this respect, the proposed development would continue to comply with paragraphs 8(b), 127 and 130 of the National Planning Policy Framework, February 2019 (the Framework) which seek a high standard of living for existing users and high quality design which meets the social objective of sustainable development, amongst other things.
9. Paragraph 54 of the Framework states that conditions can be used to make otherwise unacceptable developments acceptable. This condition is not necessary to make the proposed development acceptable.

Conditions

10. I have considered the conditions attached to the original permission and considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents.
11. Planning permission must not be granted for a removal of a condition following the grant of planning permission which would have the effect of increasing the time within which a development must be started. Therefore, I have amended the time limit in condition 1. The plans condition is required in the interests of certainty.

Conclusion

12. For the reasons given above I conclude that the appeal should be allowed.

H Miles

INSPECTOR